

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

UNITED STATES OF AMERICA)	
)	
vs.)	NO. EP-07-CR-2236-PRM
)	
CLINTON UDET PINCKERT,)	
)	
Defendant.)	

**NOTICE OF GOVERNMENT'S DESIGNATION OF EXPERT WITNESS
AND MEMORANDUM OF LAW IN SUPPORT THEREOF**

Comes now the United States of America, by and through the United States Attorney for the Western District of Texas, and files this Designation of Expert Witness and Memorandum of Law in Support Thereof, and shows the Court as follows:

I.

Clinton Udet Pinckert is charged in a three-count indictment charging him with the Attempted Destruction of an Aircraft and Assault on a Federal Agent. The above-referenced cause is scheduled for jury selection and trial on June 20, 2008.

II.

Pursuant to Fed.R.Crim.P. 16(a)(1)(E), the Government hereby gives notice to the Defendant of its intent to use David Briones, M.D., Professor and Interim Chair, Department of Neuropsychiatry at Texas Tech Health Sciences Center, Paul L. Foster

School of Medicine, located in El Paso, Texas as an expert witness. Dr. Briones will testify as to his expertise in psychiatry and, specifically, his examination of and consultation with the defendant concerning his mental status at the time of the offense, his review of relevant medical documents concerning the defendant's mental health history and his review of relevant reports detailing the offense. Dr. Briones will also testify regarding the medical conclusions and opinions he reached concerning the defendant's mental health status on the day of the offense. Dr. Briones further will testify about his examination of the defendant, the medical and offense report documents available in this case. Dr. Briones report has not yet been provided to the Government.

III.

The admissibility of expert opinion testimony generally turns on the following preliminary question of law determinations by the trial judge under Federal Rules of Evidence, Rule 104(a):

- Whether the opinion is based on scientific, technical, or other specialized knowledge, Federal Rules of Evidence, Rule 702;
- Whether the expert's opinion would assist the trier of fact in understanding the evidence or determining a fact in issue, Federal rules of Evidence, Rule 702;
- Whether the expert has appropriate qualifications, that is, some special knowledge, skill, experience, training, or education on that subject matter, Federal Rules of Evidence, Rule 702; Jones v. Lincoln Elec. Co., 188 F.3d 709 (7th Cir. 1999); See Wilson v. Woods, 163 F.2d 935, 936 (5th Cir. 1999)(expert in fire reconstruction unqualified as expert in auto accident reconstruction).

- Whether the testimony is relevant and reliable. Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 589 (1993); Kumho Tire Company, Ltd. v. Carmichael, 526 U.S. 137, 152-53 (1999).
- Whether the methodology or technique the expert uses “fits” the conclusions (the expert’s credibility is for the jury). See Joiner, 522 U.S. at 145;
- Whether its probative value is substantially outweighed by the risk of unfair prejudice, confusion of issues, or undue consumption of time. Federal Rules of Evidence, Rule 403.

Wherefore, premises considered, the Government respectfully gives notice of its intent to call this expert witness to testify at trial.

Respectfully submitted,
JOHNNY SUTTON
UNITED STATES ATTORNEY

By: /s/
JUANITA FIELDEN
Assistant U.S. Attorney
Texas Bar No. 06965600
700 E. San Antonio Street, Suite 200
El Paso, Texas 79901

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of May, 2008, I electronically filed the

foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following: Robert Perez, 210 N. Campbell, El Paso, Texas 79901.

By: /s/
JUANITA FIELDEN
Assistant U.S. Attorney